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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCELO MUTO, NOAH BREEZE,  
JOHN DOE 1, JOHN DOE 2, and all  
others similarly situated,

Plaintiffs,

v.

FENIX INTERNATIONAL LIMITED;  
FENIX INTERNET LLC,

Defendants.

CASE NO. 5:22-cv-02164-SSS-KK

**DEFENDANTS FENIX  
INTERNATIONAL LIMITED AND  
FENIX INTERNET LLC'S MOTION  
TO DISMISS PLAINTIFFS'  
CONSOLIDATED COMPLAINT**

Hearing Date: August 11, 2023

Time: 2:00 PM

Dept: Courtroom 2

Judge: Hon. Sunshine S. Sykes

**NOTICE OF MOTION AND RELIEF SOUGHT**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on August 11, 2023, at 2:00 PM, or as soon thereafter as is available, in the courtroom of the Honorable Sunshine S. Sykes, located at 3470 Twelfth Street, Riverside, California 92501-3801, Courtroom 2, 2nd Floor, Defendants Fenix International Limited (“FIL”) and Fenix Internet LLC (“Fenix Internet”) (collectively, “Defendants”) will and hereby do move this Court pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6), and the doctrine of *forum non conveniens* to dismiss all claims asserted against them in Plaintiffs’ Consolidated Class Action Complaint (ECF No. 34) (“CAC”).

The Court should dismiss with prejudice each of Plaintiffs’ claims in their entirety because:

**1. *Plaintiffs Must Bring this Suit in the United Kingdom:*** The forum-selection clause in the OnlyFans Terms of Service—which each of the Plaintiffs agreed to when they created their OnlyFans accounts—requires Plaintiffs to bring this suit in the United Kingdom (where OnlyFans is operated) and mandates dismissal of this action pursuant to the doctrine of *forum non conveniens*.

**2. *The Court Lacks Personal Jurisdiction over both FIL and Fenix Internet:*** Neither FIL (a United Kingdom domiciled company) nor Fenix Internet (a Delaware domiciled company) is subject to personal jurisdiction in California, as neither undertook acts related to this suit that were purposefully directed at this forum; the only possible California-based connections are Plaintiffs’ decisions to access the OnlyFans website from this state which is not material to personal jurisdiction.

1           **3.     *Plaintiffs Lack Standing to Bring their Claims:*** Plaintiffs' conduct  
 2 demonstrated their understanding that their OnlyFans subscriptions renewed. Each  
 3 named Plaintiff regularly subscribed to and subsequently cancelled dozens of OnlyFans  
 4 subscriptions before their renewal date (often, almost right away). In some instances,  
 5 they later re-subscribed to the same content and again cancelled before the renewal  
 6 date. None of FIL's or Fenix Internet's alleged violations caused Plaintiffs injury, so  
 7 they cannot establish either constitutional or statutory standing.

8           **4.     *Plaintiffs Fail to State a Cause of Action Against Fenix Internet:***  
 9 Plaintiffs plead no facts showing that Fenix Internet violated any of the statutes that the  
 10 CAC attempts to assert.

11           This Motion is based on this Notice of Motion and Motion, the following  
 12 Memorandum of Points and Authorities, Declaration of Lee Taylor, Declaration of  
 13 Antony White KC, the complete files and records in this action, any reply papers  
 14 Defendants may file, any matters of which the Court may take judicial notice, any such  
 15 materials or arguments as may be presented to the Court in conjunction with hearing on  
 16 this motion, and any other matter that the Court may properly consider.

17           This Motion was made following the conference of counsel pursuant to L.R. 7-3,  
 18 which took place via Zoom on June 15, 2023, and lasted approximately 15 minutes.  
 19 Present for the conference were Jon Direnfeld (Defendants) and Mark Poe (Plaintiffs).  
 20 Going into the conference, the parties' positions relating to the motion to dismiss were  
 21 well-known, as counsel for Defendants and Plaintiffs Muto and Breeze had multiple  
 22 meet-and-confer conferences relating to Defendants' Motion to Dismiss the Second  
 23 Amended Complaint, and counsel for Defendants and Plaintiffs Muto and Breeze  
 24

1 subsequently briefed that motion to dismiss. Given that the substantive grounds for  
2 Defendants' renewed motion to dismiss remain largely unchanged, the parties spent the  
3 conference discussing changes contained in the CAC. The parties were unable to  
4 resolve any issues relating to the contemplated motion to dismiss.

5  
6 Dated: June 22, 2023

ORRICK, HERRINGTON & SUTCLIFFE LLP

7  
8 By: /s/ Jacob M. Heath

JACOB M. HEATH

THOMAS FU

JONATHAN A. DIRENFELD

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FENIX INTERNATIONAL LIMITED and

FENIX INTERNET LLC

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DEFENDANTS FENIX INTERNATIONAL LIMITED AND FENIX INTERNET LLC’S MOTION TO DISMISS

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiffs are four users of the content sharing, social media website OnlyFans.com (“OnlyFans”), which is owned and operated by Defendant Fenix International Limited (“FIL”). Although Plaintiffs previously purchased then cancelled ninety five separate OnlyFans subscriptions (before the renewal date), they now claim they were deceived when four subscriptions they *chose not to cancel* were renewed. Specifically, Plaintiffs claim that (notwithstanding their lengthy subscription and successful cancellation history on OnlyFans.com) on these occasions they had no idea that failing to cancel these subscriptions on OnlyFans.com would result in the subscriptions renewing for another month. This is Plaintiffs’ basis on which they seek to maintain this putative class action against FIL, a company established and based in the United Kingdom that operates OnlyFans, and Fenix Internet LLC (“Fenix Internet”), a Delaware company that provides support services for FIL unrelated to the claims in this action.

Plaintiffs’ claims fail for three reasons. *First*, this case must be ***dismissed under the doctrine of forum non conveniens***. Plaintiffs’ action flouts the contractual agreement they made, when signing up for OnlyFans, to bring all suits relating to their use of OnlyFans exclusively in the United Kingdom (where OnlyFans is domiciled). *Second*, there is ***no personal jurisdiction*** over FIL or Fenix Internet in California. The CAC attempts to hale two out-of-state defendants into California court, not because either has purposefully directed any relevant action at California, but solely because *Plaintiffs* chose to access OnlyFans from California. But only a *defendant’s* forum

1 contacts—not a plaintiff’s—can provide a basis for personal jurisdiction. *Third*,  
 2 ***Plaintiffs lack standing*** to pursue the claims in this action. Plaintiffs’ respective  
 3 account and transaction histories on OnlyFans demonstrate that Plaintiffs understood  
 4 that OnlyFans subscriptions would automatically renew if not cancelled. Accordingly,  
 5 OnlyFans’s supposed failure to communicate that fact did not cause Plaintiffs any  
 6 injury.

7 Even if California were an appropriate forum, and this Court had personal  
 8 jurisdiction, and Plaintiffs had standing (which Defendants refute), the action would  
 9 still—at a minimum—have to be dismissed as to Fenix Internet, as Fenix Internet does  
 10 not operate OnlyFans and is not responsible for any disclosures or representations  
 11 regarding subscription renewal that appear on the site (and which form the basis for  
 12 Plaintiffs’ claims). Indeed, the CAC does not allege that Fenix Internet acted to violate  
 13 the law; it only claims that Fenix Internet “is, or has been, continuously in possession of  
 14 money wrongfully taken from Plaintiff.” CAC ¶ 19. Possessing Plaintiffs’ money is  
 15 not a violation of any of the statutes cited in Plaintiffs’ CAC and is not a basis for  
 16 maintaining this lawsuit against Fenix Internet.

17 Plaintiffs’ lawsuit should be dismissed with prejudice.

## 18 **II. FACTUAL BACKGROUND**

### 19 **A. FIL, Fenix Internet, and OnlyFans**

20 FIL is a company incorporated and registered in England and Wales, with its  
 21 headquarters in London. Taylor Decl. ¶ 3. FIL owns and operates the popular  
 22 international content sharing and social media website, OnlyFans. *Id.* OnlyFans is a  
 23 leading global platform that allows users (i.e., “Fans”) from around the world to  
 24

1 subscribe to and engage with content (such as videos, music, and photographs)  
 2 produced by content creators (“Creators”) located around the world. Fans can subscribe  
 3 to their favorite Creators for access to exclusive content and opportunities to interact  
 4 directly with those Creators.

5 Fenix Internet is a separate company that is organized under the laws of  
 6 Delaware, with its registered office in Delaware. Taylor Decl. ¶ 4. Fenix Internet does  
 7 not operate OnlyFans; instead, it performs payment and administrative support services  
 8 for FIL. *Id.* ¶¶ 5-6. Specifically, Fenix Internet collects payments from third-party  
 9 processors and distributes the money it collects (through other third-party providers) to  
 10 Creators, as directed by FIL. *Id.* ¶ 6.

11 Neither FIL nor Fenix Internet is registered to do business in California. Taylor  
 12 Decl. ¶ 10. Neither has any offices or employees in California. *Id.* ¶ 7. Neither  
 13 engages in marketing, sales, or commercial activity targeted specifically at California  
 14 residents. *Id.* ¶ 8.

#### 15 **B. The OnlyFans Terms of Service and Forum-Selection Clause**

16 When individuals—including Plaintiffs—sign up for a Fan account on OnlyFans,  
 17 they must agree to the OnlyFans Terms of Service (“Terms”) by clicking a button  
 18 immediately next to text stating: “By signing up you agree to our Terms of Service ...”  
 19 CAC ¶ 56. That same disclosure includes a hyperlink (denoted in bold and in bright  
 20 blue font) to the Terms, which immediately inform a reader that “**BY USING OUR**  
 21 **WEBSITE YOU AGREE TO THESE TERMS – PLEASE READ THEM**”

1 **CAREFULLY.”** Taylor Decl., Ex. D (emphasis in original).<sup>1</sup>

2 The Terms include a forum-selection clause requiring OnlyFans users to file all  
3 claims in the United Kingdom (specifically, the courts of England and Wales), where  
4 FIL is incorporated and headquartered. The forum-selection clause that Plaintiffs  
5 agreed to when they signed up for their accounts appeared conspicuously in bold text.  
6 Taylor Decl., Ex. A at Section 18 (“any dispute ... concerning OnlyFans ... shall be  
7 resolved exclusively in the courts of England and Wales”); Taylor Decl., Ex. B at  
8 Section 16 (“any claim arising out of or in connection with your agreement with us ...  
9 must be brought in the courts of England and Wales”); Taylor Decl., Ex. C at Section  
10 17 (“any dispute ... concerning OnlyFans ... shall be resolved in the courts of England  
11 and Wales”).<sup>2</sup> By accepting the Terms, Plaintiffs also agreed that OnlyFans may make  
12 changes to the Terms and site at its sole discretion, and that by continuing to use  
13 OnlyFans after such notice, they agree to the modified Terms. Taylor Decl., Ex. A at  
14 Section 1.4; Taylor Decl., Ex. B at Section 4; Taylor Decl., Ex. C at Section 1.4.

15 In December 2021, OnlyFans updated its Terms, which clarified that a user “will  
16

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17 <sup>1</sup> The four Plaintiffs in this case seem to take different positions on the Terms. Plaintiffs Muto and  
18 Breeze previously conceded that individuals agree to the Terms when they sign up for a Fan account  
19 on OnlyFans. Second Amended Complaint (ECF No. 14) (“SAC”) ¶ 8. The Doe Plaintiffs maintain  
20 the opposite, insisting that they “did not see or affirmatively agree to the Terms of Service.” CAC  
21 ¶¶ 85, 92. This difference in positions is ultimately irrelevant, however, as the law is clear that  
22 interfaces indistinguishable from OnlyFans’s (sometimes called “sign-in wrap”) bind users to the  
23 Terms. *Dickey v. Ticketmaster LLC*, 2019 WL 9096443, at \*7 (C.D. Cal. 2019).

24 <sup>2</sup> In ruling on a motion to dismiss for lack of personal jurisdiction, for *forum non conveniens*, or for  
lack of standing, this Court may consider matters outside of the pleadings. *See, e.g., Bostick v. Gen.*  
*Motors, LLC*, 2020 WL 13283478, at \*2 (C.D. Cal. 2020) (personal jurisdiction); *Graduation Sols.*  
*LLC v. Luya Enter. Inc.*, 2020 WL 9936697, at \*1 (C.D. Cal. 2020) (*forum non conveniens*); *Maya v.*  
*Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011) (standing). Further, the Court may consider the  
OnlyFans Terms because they are expressly referenced in the CAC. *See* CAC ¶¶ 36-40; *see also, e.g.,*  
*Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

also be able to rely on mandatory rules of the law of the country where you live.”

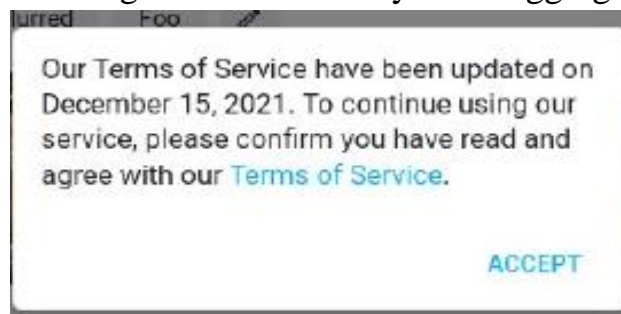
Taylor Decl., Ex. D at Section 16a. The mandatory forum-selection clause remained:

TERMS OF SERVICE

16. Terms relating to disputes – the law which applies to your agreement with us and where disputes and claims concerning your use of OnlyFans (including those arising from or relating to your agreement with us) can be brought:
- a. For consumers (Fans):
- Consumers - Law:
    - If you are a consumer, your agreement with us is governed by English law and English law will apply to (i) any claim that you have arising out of or in connection with your agreement with us or your use of OnlyFans, and (ii) any claim that we have against you that arises out of or in connection with your agreement with us or your use of OnlyFans (including, in both cases, non-contractual disputes or claims). You will also be able to rely on mandatory rules of the law of the country where you live.
  - Consumers - where claims must be brought:
    - If you are a consumer resident in the United Kingdom or the European Union, any claim which you have or which we have arising out of or in connection with your agreement with us or your use of OnlyFans (including, in both cases, non-contractual disputes or claims) may be brought in the courts of England and Wales or the courts of the country where you live.
    - If you are a consumer resident outside of the United Kingdom or the European Union, any claim which you have or which we have arising out of or in connection with your agreement with us or your use of OnlyFans (including, in both cases, non-contractual disputes or claims) must be brought in the courts of England and Wales.

Taylor Decl., Ex. D at Section 16a. OnlyFans notified all users, including Plaintiffs, of the update on November 14, 2021, a month before it took effect.

Taylor Decl. ¶ 20. Additionally, the first time that any user, including Plaintiffs, logged into their OnlyFans account on or after December 15, 2021, they were presented with the following alert immediately after logging into their account:



Taylor Decl. ¶ 21. All users had to click “ACCEPT” to continue using OnlyFans and could not have continued to use their OnlyFans account without first agreeing to the updated Terms. *See id.* ¶ 22. All Plaintiffs affirmatively accepted the December 15, 2021, amendments and thereafter continued to use their OnlyFans accounts. *Id.* ¶¶ 23-27, Ex. E-H.

1        Additionally, the Terms provide details—labeled clearly in bold  
 2   (“**Subscriptions and purchases by Fans**”)—about how OnlyFans subscriptions  
 3   work. Taylor Decl., Ex. D at Section 8 (emphasis in original). The Terms  
 4   explain that, in general, “all Subscriptions to a Creator’s profile will  
 5   automatically renew at the end of the relevant subscription period.” *Id.* But they  
 6   also note that users have full control. If a user wishes to opt out of automatic  
 7   renewals, they can select to “turn[] off the ‘Auto-Renew’ switch located on the  
 8   relevant Creator’s profile. This means that if you want to stop subscribing to a  
 9   Creator’s profile and paying continuing monthly subscription charges, you will  
 10   need to turn off the ‘Auto-Renew’ switch located on the relevant Creator’s  
 11   profile.” *Id.* To eliminate any doubt, the Terms explain that “[i]f you cancel a  
 12   Subscription you will continue to be permitted to view the relevant Creator’s  
 13   Content until the end of the subscription period in which you cancelled, after  
 14   which no further payments will be taken from your payment card in respect of  
 15   subscriptions to that Creator’s profile (unless you choose to pay for a new  
 16   Subscription to that Creator’s profile), and you will no longer be able to view the  
 17   relevant Creator’s Content.” *Id.*

### 18        **C.    Plaintiffs’ Allegations**

19        Plaintiffs created Fan accounts on OnlyFans and agreed to the Terms through the  
 20   process described above. *See* Taylor Decl., ¶¶ 14-27; CAC ¶ 56. Through those Fan  
 21   accounts, they purchased—and then cancelled, *before* the renewal date—95  
 22   subscriptions to multiple OnlyFans Creators. *See* Taylor Decl. ¶¶ 31-52, Ex. I-L.

23        Notwithstanding (a) OnlyFans’s clear subscription renewal notice and  
 24

1 explanation; (b) Plaintiffs' own familiarity with OnlyFans's subscription, renewal, and  
 2 cancellation process; and (c) their contractual promise to bring any suit relating to their  
 3 use of OnlyFans in England or Wales, Plaintiffs filed this putative class action lawsuit  
 4 in California court. Plaintiffs assert that OnlyFans's automatic subscription renewal  
 5 was not adequately disclosed to them, causing them to incur unwanted renewal charges.  
 6 Plaintiffs claim that OnlyFans's supposedly inadequate disclosures violate the  
 7 California Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.* ("UCL").

### 8 **III. LEGAL ARGUMENT**

#### 9 **A. Plaintiffs' Claims Should Be Dismissed Under the Doctrine of *Forum Non Conveniens*.**

10 The Court should dismiss the CAC in its entirety because Plaintiffs agreed that  
 11 any claim they have arising out of or in connection with their use of OnlyFans,  
 12 including non-contractual disputes, must be brought in the courts of England and  
 13 Wales. The law is clear that where "the parties have agreed to a valid forum-selection  
 14 clause, a district court should ordinarily transfer the case to the forum specified in that  
 15 clause." *Yei A. Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1087 (9th Cir.  
 16 2018). However, where (as here) the selected venue is in a foreign country, federal  
 17 courts must dismiss the action for improper venue under the doctrine of *forum non*  
 18 *conveniens*. See *Brooks v. Sotheby's*, 2013 WL 3339356, at \*6 (N.D. Cal. 2013); see  
 19 also *Yei A. Sun*, 901 F.3d at 1087.

20 Unlike an ordinary *forum non conveniens* analysis, which balances "the  
 21 convenience of the parties and various public-interest considerations," the analysis is  
 22 weighted heavily in favor of dismissal where (as here) there is a valid forum-selection  
 23 clause. *Yei A. Sun*, 901 F.3d at 1087 & n.3. In fact, a plaintiff's desire to litigate in one  
 24

forum “merits no weight,” *id.* at 1087, after the parties have contracted to litigate in a different forum. The court must treat the parties’ private interests as weighing “entirely in favor of” the forum selected in the clause. *Id.* at 1088. For similar reasons, the public-interest, too, “will rarely defeat a transfer motion.” *Id.* As such, a forum-selection clause will “control except in unusual cases.” *Id.* (quoting *Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. of Tex.*, 571 U.S. 49, 64 (2013)).

Because there is no dispute that Plaintiffs agreed to a mandatory forum-selection clause in the OnlyFans Terms requiring them to bring their lawsuit in the United Kingdom, *see* CAC ¶ 56; *supra* n.1, Plaintiffs can avoid dismissal only if they show “extraordinary circumstances unrelated to the convenience of the parties” that would render the clause unenforceable. *Yei A. Sun*, 901 F.3d at 1088. Here, the CAC offers three reasons that the clause should not be enforced. None withstands scrutiny.

**a) Enforcement of the forum-selection clause would not contravene a strong public policy.**

First, the CAC claims that “the ARL,<sup>3</sup> and the UCL, are fundamental public policies of the State of California” and that “[t]here are no similar provisions in English law that would afford Plaintiffs and the Class any similar relief in the courts of England or Wales.” CAC ¶ 37. Neither piece of that argument is correct. For one thing, “English law provides for at least three corresponding causes of action [to the Plaintiffs’ UCL claim], which the Plaintiffs could pursue” if they bring their claims in the United Kingdom. White Decl. ¶ 31. Just as important, courts have specifically rejected the contention that the UCL involves such a “strong public policy” of California that it can

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<sup>3</sup> “ARL” stands for California’s Automatic Renewal Law. Bus. & Prof. Code § 17600.

1 provide a basis for invalidating a forum-selection clause. *Compound Sols., Inc. v.*  
 2 *CoreFX Ingredients, LLC*, 2020 WL 3639663, at \*5 (S.D. Cal. 2020). To the contrary,  
 3 “[e]ven if there is no ... equivalent to the UCL” in the selected forum, there is still no  
 4 public policy “that could be violated by enforcing the Forum Selection Clause.” *Id.*  
 5 And because the ARL itself has “no private cause of action” but is instead enforced  
 6 through suit “under the UCL,” *Johnson v. Pluralsight, LLC*, 728 F. App’x 674, 677 (9th  
 7 Cir. 2018), the same is true of the ARL.<sup>4</sup>

8 **b) The forum-selection clause is not unconscionable.**

9 Next, the CAC claims that the Terms are both procedurally and substantively  
 10 unconscionable. CAC ¶ 38. Again, neither part of that argument is correct.

11 Plaintiffs maintain that the forum-selection clause is procedurally unconscionable  
 12 because it is contained as a provision in the OnlyFans Terms, which: (1) users agree to  
 13 via a “sign-in wrap” as opposed to a “clickwrap” interface, CAC ¶ 38; and (2) is a  
 14 “contract of adhesion,” *id.* But courts consistently find “sign-in wrap agreements  
 15 enforceable.” *B.D. v. Blizzard Ent., Inc.*, 76 Cal. App. 5th 931, 951 (2022). And, even  
 16 if the Terms were a contract of adhesion (they are not), courts regularly hold that “[t]he  
 17 fact that a contract is adhesive” is just the beginning, “not [the] end [of] the inquiry  
 18 \_\_\_\_\_

19 <sup>4</sup> In any event, even if the UCL or ARL did implicate such fundamental California public policies that  
 20 they could not be waived, that would still provide no basis for refusing to enforce the forum-selection  
 21 clause, because the OnlyFans Terms specifically provide that an OnlyFans user will always “be able to  
 22 rely on mandatory rules of the law of the country where you live.” Taylor Decl., Ex. D at Section 16a.  
 23 Defendants stipulate that if the Court concludes that either the UCL or ARL creates non-waivable  
 24 rights under California law, Plaintiffs will be able to rely on those statutes once the action is properly  
 filed in the correct forum. Having so “stipulat[ed] that [any unwaivable claim] will apply in the  
 transferee court,” there is no “risk of diminishing Plaintiff’s statutory rights under California law,” and  
 no basis for refusing to apply the forum-selection clause on that basis. *Derosa v. Thor Motor Coach,*  
*Inc.*, 2020 WL 6647734, at \*4 (C.D. Cal. 2020).

1 regarding procedural unconscionability.” *Cabot Creekside 8 LLC v. Cabot Inv. Props,*  
 2 *LLC*, 2011 WL 13223878, at \*10 (C.D. Cal. 2011); *see also, e.g., Balboa Cap. Corp. v.*  
 3 *Shaya Med. P.C. Inc.*, 2021 WL 6104011, at \*3 (C.D. Cal. 2021). There is no “rule that  
 4 an adhesion contract is per se unconscionable.” *Poublon v. C.H. Robinson Co.*, 846  
 5 F.3d 1251, 1261-62 (9th Cir. 2017) (“[T]he adhesive nature of a contract, without more,  
 6 would give rise to a low degree of procedural unconscionability at most.”).<sup>5</sup>

7 Given the “minimal evidence of procedural unconscionability,” the forum-  
 8 selection clause can be avoided “only on a showing of significant substantive  
 9 unconscionability.” *Cabot Creekside 8 LLC*, 2011 WL 13223878, at \*12. Plaintiffs  
 10 primarily assert that the forum-selection clause is “substantively unconscionable”  
 11 because “they purport to require individual consumers to waive their right to a jury trial,  
 12 to class action relief, and waive the protection of California consumer laws,” CAC ¶ 39.  
 13 But the OnlyFans Terms purport no such things—they merely require that claims be  
 14 brought in England or Wales.

15 Perhaps realizing that, Plaintiffs fall back to a different, and irrelevant,  
 16 argument—that “California consumers” face “burdens” to litigating in the United  
 17 Kingdom that “prevent their claims from being presented, heard and resolved on the  
 18 merits at all.” CAC ¶ 39. Courts have been clear that, to avoid enforcement of the  
 19

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20  
 21 <sup>5</sup> The CAC also asserts in passing that the forum-selection clause is unconscionable because it  
 22 “allow[s] consumers in other countries [to] bring claims against FIL in courts in their countries of  
 23 residence ... but does not afford equal treatment to U.S. consumers.” CAC ¶ 38. But Plaintiffs cite no  
 24 authority in support of this contention—and for good reason. By definition, essentially every forum-  
 selection clause will allow some—but not all—consumers to sue in their home jurisdiction. And so,  
 Plaintiffs’ argument amounts to the absurd contention that every forum-selection clause is, by its  
 nature, unconscionable and unenforceable.

1 forum-selection clause on the ground that it would deprive them of their day in court,  
 2 Plaintiffs must show that “the contractually selected forum affords [them] no remedies  
 3 whatsoever.” *Yei A. Sun*, 901 F.3d at 1092. The “inconvenience of litigation in” the  
 4 selected forum—and “a plaintiff’s financial ability to bear the [associated] costs”—are  
 5 irrelevant to the analysis. *LaCross v. Knight Transp., Inc.*, 95 F. Supp. 3d 1199, 1205  
 6 (C.D. Cal. 2015). That is because a forum-selection clause is “a contractual obligation”  
 7 whereby Plaintiffs each willingly agreed to bring suit only in a certain forum, and so  
 8 there is “no injustice” for holding Plaintiffs to that promise. *Yei A. Sun*, 901 F.3d at  
 9 1091. In the words of another court that considered—and enforced—a forum-selection  
 10 clause in the OnlyFans Terms: Because any difficulties of litigating in the United  
 11 Kingdom were “clearly foreseeable at the time of contracting,” requiring Plaintiffs to  
 12 bear those expected costs does not deprive them of their day in court. *Muniz v. Fenix*  
 13 *Int’l Ltd.*, 2021 WL 3417581, at \*4 (N.D. Ga. 2021).

14 **c) Enforcement of the forum-selection clause would not**  
 15 **require waiver of public injunctive relief.**

16 Finally, the CAC asserts that the forum-selection clause is “unenforceable  
 17 because Plaintiffs seek public injunctive relief, which ... cannot be waived by contract.”  
 18 CAC ¶ 40. But as an initial matter, given that their lawsuit concerns (at most) OnlyFans  
 19 users, and not the public as a whole, it is doubtful that the relief they are seeking truly  
 20 qualifies as “public injunctive relief” at all. *See Capriole v. Uber Techs., Inc.*, 7 F.4th  
 21 854, 870 (9th Cir. 2021) (request for injunction that would, in practice, benefit only  
 22 “rideshare drivers” was not for public injunctive relief even though it was formally  
 23 directed more broadly); *Clifford v. Quest Software Inc.*, 38 Cal. App. 5th 745, 755  
 24 (2019) (request for injunction “securing an employer’s compliance with wage and hour

laws” is not for public injunctive relief, even though the “public certainly has an interest in” such compliance, because the practical benefits redounded primarily to only the employer’s employees). Even if they were seeking a public injunction here, the Terms do not require Plaintiffs to waive their right to that relief—and the CAC does not even attempt to show otherwise. Here, public injunctive relief—i.e., “relief that by and large benefits the general public”—would amount to an order that has the effect of declaring the renewal disclosures on OnlyFans to be inadequate and requiring them to be changed. *See DiCarlo v. MoneyLion, Inc.*, 988 F.3d 1148, 1152 (9th Cir. 2021). If Plaintiffs bring their suit in the courts of England and Wales, as they contractually agreed to do, they could obtain relief there with that same effect. Specifically, English law permits a plaintiff to sue for a declaration, which in this case would amount to an order from the English court finding the OnlyFans disclosures to be unlawful—not just for these Plaintiffs, but for all users—and requiring those disclosures to be changed. White Decl. ¶¶ 49-56. Because relief equivalent to “public injunctive relief is available to [Plaintiffs] in” their contractually agreed-upon forum, the forum-selection clause “does not violate” California public policy and “is valid.” *DiCarlo*, 988 F.3d at 1158.

**B. The CAC Should Be Dismissed for Lack of Personal Jurisdiction.**

Even if the Court were to permit Plaintiffs to circumvent the forum-selection clause and sue here, the Court should dismiss the CAC for lack of personal jurisdiction over the Defendants. Due process provides that a court may not exercise personal jurisdiction over nonresident defendants (here, FIL and Fenix Internet) unless each defendant has sufficient “minimum contacts” with the forum state (here, California) that the exercise of jurisdiction “does not offend traditional notions of fair play and

substantial justice.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004). Personal jurisdiction may be “general or all-purpose jurisdiction” or only “specific or conduct-linked.” *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). With either type, though, Plaintiffs bear the burden of establishing that the court may lawfully exercise personal jurisdiction. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Here, Plaintiffs have failed to carry that burden.

**1. Neither FIL nor Fenix Internet is Subject to General Jurisdiction in California.**

The “paradigm forum[s]” for the exercise of general jurisdiction over a corporation are “the place of incorporation and principal place of business.” *Daimler AG*, 571 U.S. at 137. General jurisdiction outside of those forums is available “[o]nly in an ‘exceptional case,’” *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014), where the defendant’s contacts are so “continuous and systematic” as to “approximate physical presence in the forum state,” *Schwarzenegger*, 374 F.3d at 801. That standard is “exacting,” and for good reason: A finding of personal jurisdiction “permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1074 (9th Cir. 2011).

California is not the “paradigm forum” for general jurisdiction over either FIL or Fenix Internet. Both companies’ respective places of incorporation and principal places of business are elsewhere. *See* Taylor Decl. ¶¶ 3-4. Nor is this the exceptional case where FIL or Fenix Internet is “so heavily engaged in activity in [California] [so] as to render [them] essentially at home.” *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 414 (2017). To the contrary, FIL and Fenix Internet have minimal connections to California. The

two companies have “no offices or staff in California, [are] not registered to do business in the state,” and “ha[ve] no registered agent for service of process.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1225 (9th Cir. 2011) (finding no general jurisdiction for that reason); *CollegeSource*, 653 F.3d at 1074 (finding no general jurisdiction where defendant had no offices or staff in forum state); *see* Taylor Decl. ¶¶ 7-10. Rather, the “vast majority of [both companies’] employees and business activities are located” elsewhere. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1070 (9th Cir. 2015) (finding no general jurisdiction for that reason); *see* Taylor Decl. ¶¶ 7-10. FIL’s and Fenix Internet’s contacts with California “fall well short of the requisite showing for general jurisdiction.” *Mavrix*, 647 F.3d at 1225.

## 2. Neither FIL nor Fenix Internet is Subject to Specific Jurisdiction in California.

Specific jurisdiction exists over a defendant only when: (1) the defendant “purposefully direct[s] his activities toward the forum”; (2) the plaintiff’s claims “arise[] out of or relate[] to the defendant’s forum-related activities”; and (3) the court’s exercise of jurisdiction would “comport with fair play and substantial justice, i.e., it [would] be reasonable.” *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1208 (9th Cir. 2020). “If any of the three requirements is not satisfied, jurisdiction in the forum would deprive the defendant of due process of law.” *Id.* A plaintiff “bears the burden to establish the first two prongs.” *Id.*

Here, the vast majority of California-related contacts described in the CAC founder on the second prong: they have nothing to do with Plaintiffs’ suit because Plaintiffs’ claims do not “arise[] out of or relate[] to” them. *Id.* As the Ninth Circuit recently made clear, a contact with the forum satisfies that standard only if the contacts

are the “‘but for’ caus[e]” of the plaintiff’s injury, or if there is such a “close connection between contacts and injury” that it “proxies for causation, ensuring jurisdiction over a class of cases for which causation seems particularly likely but is not always easy to prove.” *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 504-06 (9th Cir. 2023). The smattering of contacts listed in the CAC comes nowhere near that bar: FIL’s performing “age-verification” for California Content Creators (which Plaintiffs do not claim to be), CAC ¶ 26; various alleged employees (whom Plaintiffs do not claim to have interacted with) working in California, CAC ¶¶ 27-28, 31; “athletic or other event sponsorships” in the United States generally, CAC ¶ 29; unrelated “conferences and other meetings in California,” CAC ¶ 30; sales of unknown quantities of OnlyFans branded “clothing, towels, [and] household goods,” CAC ¶ 32; or OnlyFans’s compliance with U.S. privacy and tax laws, CAC ¶¶ 33-34. None of these purported contacts relate to Plaintiffs’ claims about the adequacy of the disclosures on OnlyFans concerning subscription renewals. Accordingly, virtually all of the alleged contacts with California identified in the CAC should be disregarded.

To the extent the CAC does identify suit-related contacts with California, it fails to allege facts showing that FIL or Fenix Internet purposefully directed such acts at California. To show that a defendant purposefully directed acts at the forum, the plaintiff must show that the defendant “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002).

**FIL.** As to FIL, the CAC’s basic theory seems to be that personal jurisdiction

exists because *Plaintiffs* were in California when they used OnlyFans. CAC ¶ 22. But the Supreme Court has emphasized that a finding of purposeful direction “must arise out of contacts that the *defendant himself creates* with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis added). Accordingly, allegations that Plaintiffs suffered injury in California as a result of Defendants’ actions or omissions, CAC ¶ 22, are insufficient to support specific jurisdiction. *See Caces-Tiamson v. Equifax*, 2020 WL 1322889, at \*3 (N.D. Cal. 2020); *see also In re Packaged Seafood Prods. Antitrust Litig.*, 338 F. Supp. 3d 1118, 1161 (S.D. Cal. 2018) (“As the Supreme Court made clear in *Walden v. Fiore*, something more is required than ‘imposition of an injury ... to be suffered by the plaintiff while she is residing in the forum state.’”). Put simply, *Plaintiffs’* choice to access OnlyFans from California does not demonstrate that *FIL* directed acts at the state. *See, e.g., In re Packaged Seafood Prods.*, 338 F. Supp. 3d at 1161.

Nor, for similar reasons, is it sufficient that *FIL* “conduct[s] business with [*other*] California residents.” CAC ¶ 32. Courts have made clear that a finding of purposeful direction cannot “be based on the mere fact that [a company] provides services to customers nationwide, including but not limited to California”—yet Plaintiffs allege even less since OnlyFans is a global, not just nationwide, business. *Caces-Tiamson*, 2020 WL 132889, at \*3; *see also, e.g., Ariix, LLC v. NutriSearch Corp.*, 2022 WL 837072, at \*3 (S.D. Cal. 2022). That is because, again, the purposeful direction inquiry “looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Walden*, 571 U.S. at 285; *see also Caces-Tiamson*, 2020 WL 132889 at \*3. The mere fact that some (or many) people choose to

1 access a globally accessible website from a particular state does not demonstrate that  
2 the *defendant* purposefully targeted that state.

3 Applying those principles, the Ninth Circuit has rejected a carbon copy of  
4 Plaintiffs’ jurisdictional theory, holding that a foreign defendant who operated a  
5 globally accessible website did not expressly aim acts at California when 20% of the  
6 site’s visitors happened to reside there. *See AMA*, 970 F.3d at 1210-11. The question is  
7 not whether the website’s *users* resided in the forum, but whether the website *itself* had  
8 a “forum-specific focus.” *Id.* at 1210; *see also, e.g., Elliot v. Cessna Aircraft Co.*, 2021  
9 WL 2153820, at \*3 (C.D. Cal. 2021) (“[O]perating a universally accessible website  
10 alone is generally insufficient to satisfy the express aiming requirement.”); *Imageline,*  
11 *Inc. v. Hendricks*, 2009 WL 10286181, at \*5 (C.D. Cal. 2009) (similar). *AMA* further  
12 held that offering “adult content” that consumers can access from the United States fails  
13 to show such a focus, because the “market for [such] content is global.” *AMA*, 970 F.3d  
14 at 1210-11. The same conclusion follows here: the CAC does not allege that OnlyFans  
15 has a “California focus”—nor can it. So, there can be no personal jurisdiction here  
16 (regardless of whether Plaintiffs or others choose to access OnlyFans here).

17 **Fenix Internet.** As to Fenix Internet, the CAC’s theory of jurisdiction hinges on  
18 its allegation that Fenix Internet “is, or has been, continuously in possession of money  
19 wrongfully taken from Plaintiff.” CAC ¶ 19. Even on its own terms, that allegation  
20 fails to show any relationship between Fenix Internet and *California*. At most, it shows  
21 a relationship between Fenix Internet and Plaintiffs—which the Supreme Court has held  
22 is insufficient to establish personal jurisdiction. *See Walden*, 571 U.S. at 285. In fact,  
23 Fenix Internet has not taken—and does not take—any relevant actions specifically  
24

1 directed to California. Fenix Internet’s purpose is to perform payment processing and  
 2 provide administrative support services for FIL. Taylor Decl. ¶ 6. Specifically, at  
 3 FIL’s direction, Fenix Internet collects from third-party processors payments made by  
 4 Fans and distributes the money it collects through other third-party processors to  
 5 Creators in the United States. Taylor Decl. ¶ 6. Accordingly, there is no basis for  
 6 holding that Fenix Internet is subject to specific jurisdiction here.

7 **C. The CAC Must Be Dismissed for Lack of Constitutional or Statutory**  
 8 **Standing.**

9 Article III standing requires a plaintiff to show (among other things) that “he  
 10 suffered an injury ... [that] was likely caused by the defendant.” *TransUnion LLC v.*  
 11 *Ramirez*, 141 S. Ct. 2190, 2203 (2021). So does statutory standing under the UCL. *See*  
 12 *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1049 (9th Cir. 2017)  
 13 (“[P]laintiffs seeking relief under California’s [UCL] ... must ... show that th[eir]  
 14 economic injury was the result of, i.e., *caused by*, the unfair business practice or false  
 15 advertising that is the gravamen of the claim.”).

16 Here, that causation requirement means that Plaintiffs must show “actual  
 17 reliance” on false or misleading statements “in order to have standing to pursue” their  
 18 claim under the UCL. *Moore v. Mars Petcare US, Inc.*, 966 F.3d 1007, 1020 (9th Cir.  
 19 2020). But Plaintiffs cannot show that requisite causation. Although Plaintiffs’ CAC  
 20 highlights certain examples of Plaintiffs’ transactions on OnlyFans in isolation,  
 21 Plaintiffs’ full transaction histories on OnlyFans paint a very different picture. Those  
 22 records show that Plaintiffs already knew of the automatically renewing nature of their  
 23 OnlyFans subscriptions, because of FIL’s clear disclosures. Plaintiffs acted on this  
 24 knowledge when they actively managed their OnlyFans subscriptions and repeatedly

1 exercised their rights to cancel and avoided automatic renewal based on the same notice  
 2 and language which they now say is unclear.<sup>6</sup> No explanation is offered by the  
 3 Plaintiffs as to why language which was clear to them in 95 separate prior instances  
 4 suddenly became unclear.

5 The CAC’s allegations relating to Plaintiff Muto, for instance, describe only his  
 6 subscription to “@taste.of.heaven” in February 2021 (and his supposed failure to  
 7 understand that that single subscription would renew if not cancelled). CAC ¶¶ 77-80.  
 8 But in the year leading up to that subscription, Plaintiff Muto subscribed to—and  
 9 cancelled—22 subscriptions to other Creators prior to avoid the automatic renewals for  
 10 which he registered. Taylor Decl. ¶¶ 33-34, Ex. I. What is more, Plaintiff Muto often  
 11 effected these cancellations *within hours of initially subscribing*, making clear that at  
 12 the time of purchase he not only knew that his subscriptions would renew if not  
 13 cancelled and that he could cancel his subscriptions prior to the renewal date to avoid  
 14 future charges, but also that even after he cancelled, he would maintain access to that  
 15 Creator’s content until the end of the subscription period, as disclosed in the OnlyFans  
 16 Terms.

17 This pattern is evident throughout his subscription history, both before and after  
 18 his subscription to “@taste.of.heaven.” Indeed, Plaintiff Muto cancelled his *very first*

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19  
 20 <sup>6</sup> In considering a motion to dismiss for lack of standing, courts may consider “extrinsic evidence,  
 21 apart from the pleadings,” and “may resolve factual disputes in order to determine whether it has  
 22 jurisdiction.” *Cal. Hosp. Ass’n v. Maxwell-Jolly*, 2010 WL 11526908, at \*2 (C.D. Cal. 2010); *see*  
 23 *also, e.g., Cholakyan v. Mercedes-Benz USA, LLC*, 2012 WL 12861143, at \*18 (C.D. Cal. 2012) (“[A]  
 24 defendant [may] rel[y] on extrinsic evidence to support its attack on standing .... [in a] motion to  
 dismiss.”). In any event, as Plaintiffs’ own CAC references their OnlyFans transaction history, that  
 history is incorporated by reference, to allow the Court to understand Plaintiffs’ allegations in  
 “context.” *See Knievel*, 393 F.3d at 1076.

1 **Creator** subscription (“Camilla Escobar”) prior to the renewal deadline, which he  
2 subscribed to years before the subscriptions at issue in his CAC (in December 2019).  
3 *Id.* He then re-subscribed to “Camilla Escobar” three months later, again cancelling the  
4 subscription almost immediately thereafter. *Id.* ¶ 34, Ex. I. Plaintiff Muto repeated this  
5 pattern of subscribing to content, cancelling the subscription before it renewed and then  
6 re-subscribing and almost immediately cancelling the subscriptions again with *three*  
7 other Creators. *Id.* This same pattern continued after the subscriptions at issue in the  
8 CAC, as well. In the two months following Plaintiff Muto’s decision to subscribe to  
9 “@taste.of.heaven,” Plaintiff Muto subscribed to eight Creators and, in all instances,  
10 cancelled his subscription on the very same day. *Id.* ¶ 36, Ex. I. Plaintiff Muto’s course  
11 of conduct on OnlyFans demonstrates that from the first time he subscribed to a Creator  
12 through his decision to describe to “@taste.of.heaven,” and continuing well after, he  
13 understood the renewal terms of his subscriptions and operated within them. He cannot  
14 plausibly allege now that any losses he claims to have suffered from allowing his  
15 subscription to “@taste.of.heaven” to renew were caused by alleged renewal  
16 compliance shortcomings by FIL.

17 Plaintiff Breeze’s transaction history shows a similar course of conduct. The  
18 CAC focuses on a single renewal fee that Plaintiff Breeze incurred in relation to his  
19 subscription to “@cheriedeville” on January 24, 2022. CAC ¶¶ 81-83. What it omits,  
20 however, is that Plaintiff Breeze had previously purchased—and cancelled—a  
21 subscription to that *very same Creator*. Taylor Decl. ¶ 39, Ex. J. In addition, Plaintiff  
22 Breeze subscribed to and then cancelled eight other subscriptions to Creators prior to  
23 the renewal date (many within minutes of first subscribing). Taylor Decl. ¶¶ 40-43, Ex.

1 J. Just like Plaintiff Muto, Plaintiff Breeze’s transaction history demonstrates that he  
2 understood how OnlyFans subscription renewals—and cancellations—worked. He  
3 cannot now claim (much less demonstrate) that the \$14.99 renewal charge he incurred  
4 on January 24, 2022, was caused by OnlyFans’s failure to adequately disclose that very  
5 same knowledge to him.

6 Plaintiff John Doe 1’s subscription activity shows that he, too, understood how  
7 OnlyFans subscription renewals and cancellations worked. Even though he alleges not  
8 to have understood OnlyFans’s renewal terms with respect to one subscription, *see*  
9 CAC ¶¶ 85-91, following that subscription he nonetheless proceeded to subscribe to  
10 another OnlyFans Creator and cancel that subscription a mere thirty-three minutes later,  
11 demonstrating that he understood OnlyFans’s subscription renewal terms and chose to  
12 continue operating within them. Taylor Decl. ¶ 47, Ex. K. This activity, therefore,  
13 undermines any claim of harm now.

14 While Plaintiff John Doe 2 alleges to have failed to understand OnlyFans’s  
15 renewal terms with respect to one subscription, *see* CAC ¶¶ 92-98, his full transaction  
16 history shows that he subscribed to and then cancelled 56 subscriptions to OnlyFans  
17 Creators prior to the renewal date. Taylor Decl. ¶¶ 51-52, Ex. L. 51 of these  
18 subscriptions and cancellations occurred *before* the subscription referenced in the CAC,  
19 and 5 of them occurred *after*. *Id.* For 42 of these subscriptions, Plaintiff John Doe 2  
20 cancelled the subscription within minutes of subscribing. *Id.* Plaintiff John Doe 2,  
21 therefore, cannot plausibly claim now that any unwanted charge resulting from the  
22 subscription referenced in the CAC was caused by inadequate disclosures on OnlyFans.  
23  
24

**D. Plaintiffs' Claims Against Fenix Internet Must Be Dismissed for Failure to State a Claim.**

Even if the CAC survives all the legal challenges above, Plaintiffs' suit still must be dismissed for failure to state a claim against Fenix Internet, because Plaintiffs do not plead any facts showing that Fenix Internet has violated the UCL or ARL. Plaintiffs' claim turns on representations that were made (or allegedly failed to be made) on the OnlyFans website. *See, e.g.*, CAC ¶¶ 59-63. As explained above, Fenix Internet does not operate OnlyFans, and is not responsible for the representations or disclosures that do or do not appear on the platform. Instead, Plaintiffs' substantive theory of Fenix Internet's supposed involvement is simply that it "is, or has been, continuously in possession of money wrongfully taken from Plaintiff." CAC ¶ 19. But merely possessing Plaintiffs' money is not a violation of the UCL or ARL—and, critically, does not establish that Fenix Internet is responsible for any action or omission that forms the basis for Plaintiffs' claims. Accordingly, Fenix Internet must be dismissed from this action.

**IV. CONCLUSION**

For the foregoing reasons, FIL and Fenix Internet respectfully request that this Court dismiss Plaintiffs' CAC with prejudice.

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**Certificate of Compliance Pursuant to L.R. 11-6.2**

The undersigned, counsel of record for Fenix International Limited and Fenix Internet LLC, certifies that this brief contains approximately 6,981 words, which complies with the word limit of L.R. 11-6.1.

/s/ Jacob M. Heath

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